FOR MYSORE STATE

Revenue (1952) Dept

MS Series

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AA.
1952
Supt.

G.O No 1334

dated 3-5-52

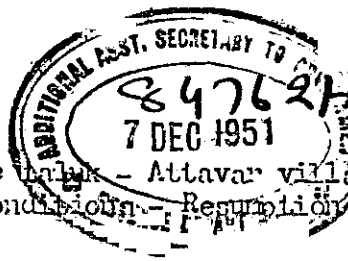
Abstract

Assignment - House site - CS Kanara - Mangalore Tk. Altavar Vge S. No 270/10. Grant under B.S.O 21 - Breach of conditions - Resumption Instructions - Issued.

REVENUE DEPARTMENT.

Subject:

ASSIGNMENT - House-site (South Kanara) Mangalore taluk - Attavar village - S.No.270/10 - Grant under B.S.O.21 - Breach of conditions - Resumption - revision petition - instructions solicited.



Ref.B.6643/51-1 Station: M a d r a s. Dated 3rd December 1951.

From

Sri A.F. Mascarenhas, I.A.S., Secretary, Board of Revenue.

Sri W.R.S. Sattianathan, I.C.S., Commissioner of Land Revenue.

...

Read: From the Collector of South Kanara Ref.C.No.A.1.28624/50 dated 16-7-51.

REFERENCE:

Submitted to the Government.

2. The Board submits the following remarks on the Collector's report. The main point raised by the Collector is whether in the case of housesite grants in South Kanara district the condition of building a house and keeping it in good state of repairs is enforceable in perpetuity evenafter the expiry of 10 years. Condition 10 of the grant order says that if without the previous approval of the Revenue Divisional Officer in writing the land is alienated by way of sale, gift etc. within a period of 10 years from the date of grant or ~~grantee or~~ it ceases to be owned by the original grantee or by his legal heirs etc. the grant will be liable to be resumed by Government. Condition 5 of the grant is that if a building of the description etc. is not substantially completed within the time mentioned (i.e. within 6 months or one year of the grant) or if such a building is erected but is subsequently abandoned i.e. lef unoccupied and in disrepair for a period of one year, the Government shall have the right to re-enter forthwith and take possession of the said site or the site and the building. No time limit is mentioned for enforcing this condition.

In 1927 certain instructions in regard to the right of re-entry on lands granted under house-site rules are issued by the Board in its Proceedings Mis. 389 dated 25-5-27, according to which the period of 10 years referred only to alienation and did not affect the right of re-entry at any time for breach of other conditions of the grant. Recently also in its proceedings Routine No.5322 dated 7-8-51, the Board held the view that the period of 10 years is concerned only with the condition of alienation and that the other condition, regarding the construction of the house and keeping it in good state of is enforceable even after the 10th year and the Government can resume the land for violation of this condition at any time irrespective of in whose possession the land might be.

Agreeably to the above views, the assignment in question seems to have been cancelled and the plot resumed by Government in 1933. This order appears to be correct. In 1937 the plot was reassigned to the original assignee on the presumption that she continued to be in possession of the plot. But in fact she had alienated the plot in 1936 itself by sale to another person. So the reassignment made to her in 1937 was wrong as it was made under a mistake of fact and this was rectified by cancelling it in 1950. Now the question arises as to how the unauthorised occupation has to be dealt with. The present occupier purchased the land from the original assignee by a sale deed which is legally null and void. There is a tiled house with some fruit trees etc. on the plot valued in all at Rs.625/-. The purchaser claims occupation of the plot for nearly 12 years. The Collector considers that it is not desirable to evict her in view of the complications and that it would be advisable to assign the plot afresh to her after collecting the site value as the plot lies within municipal limits. The Board considers that it would be really hard to the occupant if she is made to vacate the plot at this stage and that it would not be advisable also to collect the market value of the plot from her as it would mean double payment so far as she is concerned, as her predecessor once paid the value of the plot to the ex-assignee. So in view of the peculiar circumstances of the case and in consideration of the nature of the ~~peculiar circumstances of the case and~~ occupation the Board requests that the Government may be pleased to permit the assignment in favour of the encroacher waiving collection of market value.

for SECRETARY

To

The Secretary to Government, Revenue Department with connected records:

1. D.R. 455/45
2. D.R.1769/34
3. E.C.18/40
4. D.Dis.13969/48
5. Open file 1-68 pages.
6. B.P.Rt.5322 dt.7-8-51.
7. B.P.Mis.1389 dt.25-5-27.

PLG/4/12.

Copy of South Kanara Collector's Ref.C.A.1.28624/50 dated 16-7-51.

...

Assignment - Land - Mangalore Taluk - Attavar village - S.No.270/10 - assigned under B.S.O.21 - breach of conditions - resumption - revision petition - instructions solicited.

...

T.S.No.270/10(S.No.638/10) of Attavar village, MangaloreTaluk was assigned under the special darkhast rules to one Tanha daughter of Chandra Mukhari in D.R.1769/27 of the Tahsildar, Mangalore on 9-5-1915. The assignment was subject to the condition that a tiled house of the dimensions of not less than 22½'x7½'x4½& should be built within a period of one year from the date ~~of grant~~ of grant and the disposal of the land by sale, gift or otherwise was also prohibited for a period of 10 years. The assignee appears to have fulfilled these conditions and the grant was made absolute in 1926.

2. According to B.P.Mis.No.611 dated 13-3-1926 the intention of the grants under the x house-site rules was to insist on the building being completed long before the 10 years' period. There was no extension of time for building after 10 years and there was no question of interfering with the grant after 10 years. According to these instructions the assignee became the absolute owner of the plot which he could dispose of as he liked. Later on in 1927 on receipt of certain instructions regarding right of re-entry on lands granted under special House site Rules issued in Board's Res.Mis.1389 dated 25-5-1927 instructions were issued to subordinate officers that grants are liable to be cancelled even after 10 years for breach of condition of building a house. I am not sure whether this view is correct. In this connection I invite kind attention to my Ref.A.1.9812/51-6 dated 18-6-1951 in reply to Board's Ref.B.1911/51-1 dated 31-3-51 in which a similar case was reported for the orders of the Board.

3. In 1933 the assignment of the above plot was cancelled and the plot as resumed by Government. The exact circumstances under which this was done x re not known as the connected files have been destroyed under the rules but . is presumed that it should have been done under the instructions referred to n the latter part of para 2 above. In 1937 the plot was again assigned to the ame assignee in Taluk D.R.455/55 as it was reported that the assignee had built house and was occupying it. This assignment order continued to be in force till 1950. In the meantime, this assignee and three other persons who were he assignees of the adjoining plots mortgaged the plots T.S.Nos.270/9,10,17,18 nd 29 for a sum of Rs.450/- to one Ramanni in 1928. Another mortgage deed was xecuted in 1933 for a sum of Rs.200/- in favour of one Karuvan Maistri. All these lots were ultimately sold to the latter for a sum of Rs.1300/- under a registered ale deed dated 23-11-1936. Thus it would be seen that T.S.270/10 was a Governi-ent land when it was sold in 1936. The fact of mortgage or sale was evidently ot brought to the notice of the revenue authorities when the plot was assigned or the second time in 1937. This plot along with the others passed into the ands of the purchaser and thence to ~~its~~ his heirs. In 1948 the assignee Tahma iled a petition saying that her plot T.S.No.270/10 was sold by her father without her knowledge and that as the purchaser refused to hand over the plot to her she might be put in possession of the same. It was during the enquiry into this petition that the matter of mortgage sale etc. came to light. The matter was fully investigated and the Revenue Divisional Officer, Mangalore in his N.Dis.4184/50 dated 30-6-50 cancelled the assignment ordered in D.R.455/45 dated 19-2-37 and ordered institution of encroachment proceedings. Against this order one Mrs.Janaki wife of Karuvan Maistri has filed a revision petition.

4. This is a peculiar case in which Government land was alienated to a stranger by an ex-assignee and the purchaser claims title to the land by virtue of the sale deed. The assignee denies knowledge of the sale but the x x sale deed produced by the revision petitioner shows that the assignee was a party to the transaction. The assignee was the owner of the land from 1915 to 19[illegible] the grant had also been made absolute in 1926. If the view that House s become absolute after 10 years and that such grants cannot be resumed for n ment of the condition of building a house after the expiry of 10 years is held be correct, the cancellation of the assignment ordered in 1933 has to be held t be wrong. In that case ~~ordered in 1933 has to be held~~ the assignee would have continued as the absolute owner of the plot and the alienation of the plot to a stranger could not be questioned. If at all, the assignee and the purchaser

will have to settle their dispute in a Civil Court. If on the other hand it is held that the condition of buidding a house is enforceable in perpetumm even after the expiry of 10 years, then the cancellation of the assignment in 1933 ~~in~~ was in order. The sale deed will then have to be considered as null and void and the occupation of the plot by the stranger as ~~unauthorised~~ unauthorised. The cancellation of the assignement and re-entry ordered by the R.D.O in 1950 will also be similarly in order. The question then arises as to what should be done with the unauthorised occupation. There is a tiled house, on it and there are some fruit trees etc. in this plot valued in all at Rs.625/-. The revision petitioner claims occupation of the plot for nearly 12 years. It is not desirable to evict her in view of the above complications and I consider it advisable to assign the plot afresh to her after collecting the site value as the plot lies within Municipal Limits. I solicit instructions as to how I should proceed in this case.

5. The following records are enclosed for perusal and return.

/True copy/

for SECRETARY.

PLG/4/12.

Rev. Deptt.

Cross. 8476 2 H/51

Read

From the Govt. of Kerala. Ref. B. 6643/51-1
dt 3.12.51
G.O. Ms No -1334 -S.3.5.52.

Plaint
81
2/5/52

The Govt. observe that the cancellation of the assignment of the site mentioned in the Board's reference read above and the resumption of the land in 1933 after the grant was ~~of~~ made absolute were not in order. In the circumstances, they accept the recommendation of the Board of Rev. and permit the assignment of the ~~site~~ land in favour of the encroacher ~~who is a bona fide of the original assignee~~, free of market value.

Prout
27/5/52

Do

The Govt. of Kerala
with enclosures as per
list on p. 2 ci

28/5/52

28/5/52

S
1.4.

Rev. Dept.

Assignment - House site - (South Kanara) Mangalore taluk - Attavar village. S no. 270/10 - Grant under B.S.O. 21 - Breach of Conditions - Revision/clsr.

C No. 847624/54 From the Bd. of Rev. Ref. B. 6643/54-1 dt 3.12.54.

To A.S.

Please see the Refce. from the Bd. of Rev. in the c.f. The facts of the case are explained in the Colr's. letter on pp 3-4 c.f.

2. In para 1 of his letter the Colr. has stated that the assignee appears to have fulfilled the conditions subject to which the assignment was made and that the grant was made absolute in 1926. By absolute grant the Colr presumably means that the ~~site~~ assignee was not thereafter bound by the Conditions of grant and that she had absolute rights over the site. It is not known whether any orders were issued making the grant absolute.

3. In 1933 the assignment of the plot was cancelled and it was resumed. The Colr. states that the exact circumstances under which the assignment was cancelled are not known as the connected files have been destroyed under the rules. It is seen from the Colrs. office file that the Shanbogue reported in 1936 that the assignment was cancelled for failure by the assignee to build a house and reside in the plot as per conditions of assignment. The Colr. points out that in 1927 on receipt of certain instructions regarding right of re-entry on lands granted under Special House Site Rules issued in B.P. 1389 of 20.5.1927 instructions were issued to subordinate officers that grants are liable to be cancelled even after ten years for breach of condition of building a house

¶ para 4 p. 55 (Q)

para 3 p 3 C

para 2 (1) p 58 (Q) and p. 11 of (D)

" 2 p 3 C

5-6 C (B)

The Collr. states that he is not sure whether this view is correct. He presumes that the cancellation of the assignment in 1933 should have been done under the instructions issued in 1927 based on B.P. 1389 of 25.5.1927. (B)

p3 ¶1 The Collr reports that three Commercial plots have been disposed under the rules 11/2152

4. The plot in Sy. T.S.no. 270/10 (R.S.no. 638/10) of Athavar village was reserved for assignment under the Town House Site Rules. It was assigned to one 'Sankha' on 9.5.1915 under the Special Dharkast Rules. One of the conditions of the assignment was that the assignee should build a tiled house of dimensions not less than 22½' x 7½' x 4½'. within one year from the date of assignment. The disposal of the land by sale, gift or otherwise was also prohibited for a period of 10 years. Under the GO 1927 the Collr. of S. Kanara raised the point whether re-entry could be enforced even after the expiry of ten years for non-fulfillment the Conditions of Grant. The Board of Rev. informed the Collr. that the period of ten years referred only to alienation and did not affect the right of re-entry at any time for breach of other conditions of the grant. It is with reference to these instructions that the site seems to have been resumed in 1933.

Appendix p. 190 (1)

pp 1-3 of 4 (1-3)

p. 6 ¶ (3)

5. The question has to be decided whether the Govt. have got powers to resume the land after ten years when prohibition against alienation is limited to a period of ten years in the order granting the site. It appears that the land can be resumed after one year and within ten years for failure to construct a building and at any time within ten years if it is alienated or for failure to comply

with any other conditions of the grant. The question has to be considered as a general one and a decision arrived at.

6. In another connection the Advocate-General did not recognise that Govt. had an unqualified right reserved under the grant of land to cancel it at any time they please. If the Board's interpretation of the grant in 1927 is accepted it would appear that the site can be resumed at any time for failure to comply with the conditions of grant. This may perhaps be accepted if no time limit had been specified in the grant, but it appears doubtful whether a Court of Law will admit such rights on the part of the Govt.

Land S/P 2nf. file no. 2208/W 24-8-49 (X)

Compare legal notes on 43-4nf file no. 3001/W 25-11-49 (Y)

7. In the present case the issue has become more complicated; but the question of assigning the land in favour of the present occupant who is treated as an encroacher need be considered only if the resumption in 1933 is considered valid. Legal may first be requested to advise whether the resumption of lands after the expiry of the period prohibiting alienation of the site for failure to comply with the conditions of grant is valid in general and whether the resumption was in order in this case.

S. Kulasekaram 1.1.52

It appears that following the decision in Go (X) it has to be assumed that the Govt have no right to cancel an assignment of house site after the period of ten years irrespective of any time limit. The right of Govt would seem to subsist and until the period specified in the grant. Legal may see for remarks

H 3152 D/S L.G. Legal L

ASSISTANT SECRETARY 545 9 JAN 1952 LEGAL DEPARTMENT

I.V.O. No. 84/62 11/52-1

H~

Legal (Opinions-A) Department.

The land in this case was first assigned under the special dharkast rules on 9-5-1915. A copy of the terms of the grant made in 1915 is not in the file. The Collector has reported that the assignee "appears to have fulfilled these conditions and the grant was made absolute in 1926". Attention is invited in this connection to the office note at p.37 of D.R 1769/24 at (S) in which the Tahsildar was directed to inform the assignee "that the assignments made in their names have become absolute"; it is presumed that, in pursuance of these directions, the grant was made absolute and that the grantee was also informed accordingly. If the grant had thus been made absolute, it was not open to the Government to re-open the transaction in 1933. The circumstances under which the resumption was ordered are not known, as the connected papers are reported to have been destroyed. There is nothing to indicate that the assignee [redacted] acquiesced in, the resumption. The cancellation of the assignment and the resumption of the land in 1933 after the grant was made absolute cannot be said to have been in order. In the circumstances of this case, the Board's recommendation at X on p.2 c.f. viz., that the Government may permit the assignment in favour of the encroacher (who is himself the original assignee) may be accepted.

2. It is unnecessary to consider the general question of the Government's right to resume after 10 years in this particular case. Each case should be considered with reference to the terms of the grant. The question will be mostly academic in many cases. If Revenue want to pursue this general question separately, they may be asked to put up for reference a typical form of the assignment order and the darkhast rules governing the matter.

Law
15.3.52

H/15-3-52 17/3/52

Revenue

15686 H2
21 MAR 1952
REVENUE DEPARTMENT

Rev. dept.

To A.S.

Please see the notes from p. 1 above

2. This dept. may agree with legal and accept the Board's recommendation at X on p. 2 c. f. A draft order is subtd. for approval. Finance may see. (For the reasons stated in para 2 of legal notes on p. 4 above it does not seem necessary to pursue the general question.)

29/5/52

28/5/52

29/5/52 DS 14.

for

Rev. no 54762 H1/51-4
1.4.52

Fin (Accts)

Please see the Boards reference on p/p 1-2 c.f. In the circumstances stated by Legal dept on p 4 above, Rev. dept proposes to accept the Board's recommendation, to permit the assignment of the land in question in favour of the encroacher waiving collection of market value. The draft order embodying the above proposal may be accepted.

DSR
15.4.52

Rev
18/4/52

Rev

Rev. dept.

Fin no 25142 Accts I
18-4-52

To A.S.

The notes from p. 1 above may be perused. The draft order may issue

28/4/52

DS 28.4.52

M.A. Mannikar

HM (L.R) 1/5

22/4/52